

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 7
 901 NORTH 5th STREET
 KANSAS CITY, KANSAS 66101

IN THE MATTER OF)	Docket No. CWA-07-2012-0006
)	
Winfield, Missouri)	
)	
A Municipality)	
)	COMPLAINT AND CONSENT
)	AGREEMENT / FINAL ORDER
)	
Proceedings under Section 309(g))	
of the Clean Water Act,)	
33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This Administrative Complaint (“Complaint”) has been filed under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1319(g) and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order (“CA/FO”) alleges that the Respondent discharged pollutants into the waters of the United States in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA, Region 7, is the Director of Region 7's Water, Wetlands and Pesticides Division.

4. The City of Winfield, Missouri (hereafter "Respondent" or "Winfield"), is a political subdivision of the State of Missouri and a "municipality" within the meaning of 33 U.S.C. § 1362(4), which owns and operates a publicly owned treatment works ("POTW") that treats domestic and commercial wastewater.

Statutory and Regulatory Framework of Section 301 of the CWA

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, by any person except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342.

6. The Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

7. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

8. The Missouri Department of Natural Resources ("MDNR") is the state agency with the authority to administer the federal NPDES program pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding between EPA and MDNR dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of NPDES permits.

9. At all relevant times, Respondent has owned and operated the Winfield Municipal Lagoon (hereafter “WWTF”) and its associated sewer and stormwater collection and transmission systems, which receive and treat wastewater and stormwater runoff from residential and commercial connections within Winfield, Missouri.

10. The wastewater treatment facility described in Paragraph 9 is a “point source” that “discharges pollutants” to McLean Creek, a tributary to the Mississippi River and which is a “navigable water,” all as defined by Section 502 of the CWA, 33 U.S.C. § 1362. Respondent is therefore subject to the provisions of the CWA, 33 U.S.C. § 1251 et seq.

11. On August 25, 2004, MDNR granted NPDES permit No. MO-0088676 (hereafter “NPDES permit”), to the Respondent for discharges from the WWTF to McLean Creek, a tributary of the Mississippi River, subject to compliance with conditions and limitations set forth in the NPDES permit. The NPDES permit had an expiration date of August 24, 2009.

12. Pursuant to 40 C.F.R. § 122.41(e), each of Respondent’s NPDES Permits contains the following Standard Condition at Part I.B.3: “If the permittee wishes to continue an activity regulated by the permit after the expiration date of this permit, the permittee must apply for a new permit 180 days prior to expiration of this permit.” (hereafter referred to as “Duty to Apply”).

13. Pursuant to Missouri State Regulations at 10 C.S.R. 20-6(10)(E), the terms and conditions of an expired NPDES permit are automatically continued if a timely and sufficient application for a new NPDES permit has been made and MDNR is unable, through no fault of the permittee, to issue a permit prior to expiration. Only NPDES permits continued under these requirements remain fully effective and enforceable past expiration.

14. Based on observation and review of the Respondent's and MDNR records, the Respondent did not submit a timely application for permit to discharge. MDNR did not receive application for a new NPDES permit until May 10, 2010, which was approximately nine months past expiration, and approximately fifteen months past the date the Respondent was required to apply for a new permit. The Respondent's NPDES permit was not administratively extended pursuant to the Missouri Code of State Regulations, 10 CSR 20-6.010(10)(E).

Factual Background

15. On December 8 through December 10, 2009, EPA performed an inspection of the Respondent's POTW under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

16. The inspection described in Paragraph 15 above, identified violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 1 - Findings of Violation Of Section 301 Of The CWA

17. EPA's inspection documents that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants from its POTW without a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, from August 24, 2009 through May 10, 2010, as described in Paragraph 11 through 14 above.

CONSENT AGREEMENT

18. Respondent admits the jurisdictional allegations of this Complaint and CA/FO and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

19. Respondent neither admits nor denies the factual allegations contained in this Complaint and CA/FO.

20. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

21. Respondent and Complainant each agree to bear their own costs and attorney's fees.

22. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

23. Respondent consents to the issuance of the Final Order and consents to the payment of a mitigated civil penalty in the amount of Four Thousand Dollars (\$4,000) to be paid within sixty (60) days of the effective date of the Final Order.

24. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 23 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

25. The undersigned representative(s) of Respondent certifies that he is fully authorized to enter the terms and conditions of this Complaint and CA/FO and to execute and legally bind Respondent to it.

26. Payment of the entire penalty shall resolve all civil and administrative claims of the United States alleged in the Findings of Violation.

27. Respondent certifies by the signing of this CA/FO that the Respondent is operating in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and the Respondent's NPDES permit. The effect of the settlement described in paragraph 23 above is conditional upon the accuracy of this certification.

28. This Consent Agreement may be signed by EPA and Respondent in part and counterpart. This CA/FO may be executed by EPA upon receipt from Respondent of a signature page. Upon its execution, a copy of the executed agreement shall be sent by U.S. mail to Respondent.

29. Respondent agrees that the original CA/FO signed by Respondent shall be transmitted to Melissa A.C. Bagley, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region 7, 901 North Fifth St., Kansas City, Kansas 66101. Upon the EPA's receipt of the signed original from Respondent, it shall be filed with the Regional Hearing Clerk.

FINAL ORDER

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), it is ORDERED that:

1. Respondent shall pay a civil penalty of Four Thousand Dollars (\$4,000). Said penalty shall be paid in full within sixty (60) days following receipt by Respondent of a fully executed copy of this Complaint and CA/FO. Respondent shall pay the penalty by certified or cashier's check payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

EPA-Region 7
PO Box 371099M
Pittsburgh, PA 15251.

The check must also be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Melissa A.C. Bagley
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Parties Bound

2. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

Reservation of Rights

3. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

4. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including

without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

Effective Date

5. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated from the effective date unless otherwise provided in this Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flournoy
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7

Date

Melissa A.C. Bagley
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7

The City of Winfield, Missouri
EPA Docket No. CWA-07-2012-0006

FOR RESPONDENT:
WINFIELD, MISSOURI:

Name

Date

Title

IT IS SO ORDERED.

Date

Robert L. Patrick
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____ 201__, I hand-delivered the original of the foregoing Complaint and Consent Agreement/Final Order with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 7, 901 North Fifth Street, Kansas City, Kansas 66101; a true and correct copy of the same was sent by first class mail on the ____ day of _____ 201__, to:

Honorable Lawrence Cudney
City of Winfield
P.O. Box 59
Winfield, Missouri 63389.

Name